



February 16, 2007

VIA ELECTRONIC MAIL ONLY

Chair Michael McGowan and Commissioners
Delta Protection Commission
14215 River Road
P.O. Box 530
Walnut Grove, CA 95690

Re: Proposed Findings for the Old Sugar Mill Project Appeals
Comments of the Yolo County Board of Supervisors

Dear Chair McGowan and Commissioners:

This letter concerns the proposed findings prepared by your staff in connection with the Old Sugar Mill project in Clarksburg. In a separate letter, the Office of the County Counsel has addressed various inconsistencies between the proposed findings and the Commission's deliberations on January 25, 2007. The Yolo County Board of Supervisors has a number of additional concerns that I respectfully ask you to address during your February 22, 2007 meeting while you deliberate the findings, prior to their adoption or rejection.

As you are aware, the Delta Protection Act created a regional planning framework to protect certain Delta resources and values. The County and other local governments are responsible for implementing this framework, and this includes applying the Resource Management Plan to urban development projects in the Primary Zone. Needless to say, the County and other local governments can successfully carry out this responsibility only if the Resource Management Plan is interpreted by the Commission in a way that provides clear and consistent guidance on acceptable land uses. Such guidance is particularly critical here, as the County may soon have to consider modifying the Old Sugar Mill project approvals to address the Commission's final decision on these appeals.

Unfortunately, the proposed findings fail to provide such guidance. For instance, the findings relating to Land Use Policy 3 seem to indicate that a 500-foot buffer is not required. Despite that, the findings appear to reject the 300-foot buffer approved by the County without explaining that a wider buffer is mandatory, and without clarifying whether adding berms, vegetation, or other measures would address the Commission's concerns about the 300-foot buffer. The County needs more guidance to be effective on remand. Similarly, with regard to Land Use Policy 4—which requires new residential

development to be placed in existing communities with “support infrastructure and flood protection”—the findings are also unclear. They state only that the Project site lacks “support infrastructure,” with no explanation of what infrastructure is lacking. Nor do the proposed Findings explain the level or type of “flood protection” that is required before the Project can proceed, or whether recertification of the Sacramento River levee (which would address the most significant area of concern) would be sufficient to address the Commission’s concerns. Again, the County needs more guidance to be effective on remand. Finally, in connection with Levees Policy 3—which relates to increased “densities” resulting from flood protection projects—the proposed findings do not explain whether the Project is considered a “flood protection project,” nor do they explain what level of residential development is acceptable as part of a redevelopment project. Yet again, the County needs more guidance.

These are just some of the important shortcomings that the Commission should address to ensure that the County is aware of what the Resource Management Plan requires. This direction should be provided now, as part the proposed findings on these appeals, as it will help guide the County’s application of the Resource Management Plan to this Project and any future projects. As I previously stated, the County’s success in administering the Resource Management Plan requires clear and specific guidance from the Commission, and the proposed findings simply do not provide such guidance. The findings should be revised to include a clear statement of what is required by each of the three policies mentioned above (Land Use Policies 3 and 4, and Levees Policy 3). The Board of Supervisors needs this basic information to be effective on remand.

Another important problem with the proposed findings is that Commission staff have included some factual statements that are simply in error, and contrary to any evidence provided by the County. There are two particularly critical areas where this has occurred.

First, in the discussion on Land Use Policy 3 (agricultural buffers), the proposed findings repeatedly state that the Project may preclude the future agricultural use of portions of the vineyard parcel. This is not true. At most, as the Yolo County Agricultural Commissioner confirmed, a small additional portion of the vineyard property would be subject to restrictions on aerial spraying—and *only* aerial spraying—if the vineyard is one day replaced with another crop. It could still be productively farmed and the replacement crop could still be sprayed with ground equipment or other means. This is a very modest restriction that, even today, applies to much of the vineyard property. (Large portions of the vineyard property cannot be sprayed by air because residential, commercial, and industrial development borders its eastern, southern, western, and part of its northern boundaries.) Finally, County staff have advised the small area between the first row of vines and nearby Willow Avenue is County-owned right-of-way, and the vineyard thus cannot be extended into that area.

Second, in the discussion on Land Use Policy 4 and Levees Policy 3 (relating to flood protection), the proposed findings state the Project decreases the “level of public safety” in Clarksburg. We believe, however, that the County has shown exactly the opposite to be true. In the context of these policies, the level of public safety depends on the

integrity of the levees that protect Clarksburg. As the Commission found on January 25, 2007, the Project will not impair the integrity of the levees. Instead, as explained by various County representatives, the Project will include preparation of geotechnical studies, a Flood Protection Plan, and many other flood protection measures. The Project thus creates an opportunity to enhance the integrity of the Sacramento River levee and, in so doing, *increase* the level of public safety for all current and future Clarksburg residents. And while there was some confusion on this issue during the January 25, 2007 hearing, residential construction cannot proceed until all feasible improvements—with feasibility determined by looking at *all* available funding and other resources, including potential federal or State assistance, not just the applicant's resources—are implemented. For these reasons, the health and safety of the residents of Clarksburg will be enhanced, not impaired, by the Project.

I recognize that even if the Commission revises the proposed findings to address the issues noted above, the Commission's prior decision regarding consistency may remain unchanged. Despite that, the Board of Supervisors will greatly benefit from the Commission's effort to provide clear and sound guidance that is based on accurate facts. This will help avoid one or more further remands in the future.

Importantly, the County's ability to respond to the Commission's decision will be enhanced if the Commission considers the limits of the County's legal authority to regulate the use of the Project site. We are concerned that some of the Resource Management Plan policies could be interpreted to require the County to adopt regulations that may give rise to a takings claim or extend beyond the limits of the County's power to regulate land use. These issues could arise as the Commission revises the proposed findings to provide the specific guidance that the County will need to efficiently carry out its responsibilities under the Delta Protection Act and the Resource Management Plan. Your legal counsel can help identify areas of particular concern.

The final concern that we would like to address is the statement in the proposed findings—which so far as I recall, did not arise during Commission deliberations on January 25th—that the housing component of the Project is not “needed” (within the meaning of Land Use Policy 4). The Yolo County Board of Supervisors, our Planning Commission, and the County staff carefully considered this issue of housing during the four-year review process for the Project. After weighing all of the facts, studies, and testimony the Project was approved with 162 housing units.

The Board of Supervisors has always had authority to make land use decisions of this nature without State oversight. The Board of Supervisors is in the best position to determine whether, and how much, residential development is appropriate in Clarksburg and throughout the unincorporated area. Even if the Delta Protection Act gave the Commission some authority to review such a determination, we believe the Commission should not lightly set aside the judgment of the Board of Supervisors on this issue. Our judgment should be respected in consideration of our knowledge of Clarksburg, the housing needs of the area, and our responsibility as elected officials to the residents of Clarksburg and of Yolo County. Please consider removing this determination from the

Chair McGowan and Commissioners
Page 4 of 4
February 16, 2007

findings or, at the very least, engage in a full exploration of whether the Board of Supervisors somehow made a mistake in concluding that the approved number of units was necessary and appropriate.

In conclusion, the Yolo County Board of Supervisors encourages the Commission to act on our requests included in this letter. These requests are intended to be constructive, as we all have a shared interest in ensuring that the Commission's decision is sound, accurate, and helpful to the County on remand. As noted earlier, local governments have significant responsibility for regulating land use in the Primary Zone of the Delta, and revising the proposed findings to address the concerns expressed in this letter will greatly further effective local government implementation of the Act and the Resource Management Plan. On behalf of the Yolo County Board of Supervisors we appreciate your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Helen M. Thomson". The signature is fluid and cursive, with the first name "Helen" being the most prominent.

Helen M. Thomson
Yolo County Supervisor, District 2